



**MICHAEL P. WALLS**  
VICE PRESIDENT  
REGULATORY & TECHNICAL AFFAIRS

September 23, 2016

Ms. Barbara Cunningham  
Deputy Director  
Office of Pollution Prevention and Toxics  
Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460-0001  
Via email to [www.regulations.gov](http://www.regulations.gov) docket # EPA-HQ-OPPT-2016-0401

Re: Supplemental ACC Comments to Inform EPA's Rulemaking on Fees for the Administration of the Toxic Substances Control Act

Dear Ms. Cunningham:

The American Chemistry Council (ACC) welcomes the opportunity to provide some brief supplemental comments to the Office of Pollution Prevention and Toxics (OPPT), following the September 13, 2016 industry consultation session on a fee system to defray certain costs of administering the Toxic Substances Control Act (TSCA).

Many of our comments address questions raised by OPPT's estimate of TSCA-related costs for Fiscal Year 2019 (FY19), distributed in advance of the September 13, 2016 meeting (attached for ease of reference).

1. EPA is Required to Ignore the Costs of Risk Evaluations Under Section 6(b) for the Purposes of Calculating Initial Fee Requirements.

In the exercise of its fee authority under Section 26, the Agency must set fees at a level designed to provide a sustainable source of funds to defray the lower of \$25 million or 25% of the Agency's costs of administering sections 4, 5, 6, and 14. Section 26(b)(4)(B)(i)(I), however, requires the initial fee level to be calculated without regard to the costs of risk evaluations under section 6(b). Beginning with the first three-year review of the TSCA fee program, EPA must exclude only the costs associated with manufacturer-initiated risk evaluations requested under section 6(b)(4)(C)(ii) from the total of administrative costs that may be defrayed.

The practical implication of the statutory language is that the estimate of anticipated TSCA administrative costs for FY17-19 would be at reduced by at least \$24.5 million annually, compared to the FY19 estimate. The Lautenberg Chemical Safety Act (LCSA) assumes that current appropriations provide EPA the resources to conduct at least 10 risk evaluations in the first three years. Section 6(b)(2)(B) requires the number of risk evaluations to increase to at least 20 per year, no later than three and one-half years after enactment. That timing is consistent with the first fee



review required three years after enactment.

EPA's fee revenue target for the initial three years of work under the LCSA should be calculated without regard to section 6(b) risk evaluations. The three-year review requirement (and reviews every three years thereafter) will permit the Agency to adjust fees as experience dictates.

## 2. Comments on EPA's Cost Estimate Presentation

ACC appreciates the additional information provided in the attached material. We understand that the information covers estimated costs for the administration of sections 4, 5, 6, and 14 as of FY19, and that it was not intended by the Agency as a firm estimate or a proposal.

ACC believes that additional clarification would help industry understand the basis for the estimate.

- At the September 13 consultation session, it was stated that the FY19 estimate was based at least in part on the expectation of an increase in EPA's TSCA-related budget (and appropriation) for FY16. If provided in each of FY17 and FY18, the funding increase would mean an additional increment of activity in each of sections 4, 5, and 6. It would be helpful to clarify how the anticipated budget/appropriations increase in FY16 is reflected in the estimate of costs for FY19.
- EPA has estimated total costs for the administration of sections 4, 5, 6, and 14 to be \$110 million. This figure does not estimate costs for the entire program. There are costs associated with other sections of TSCA that are apparently not reflected in the estimate. ACC would appreciate additional information on what parts of the TSCA program are not reflected in the \$110 million estimate, and the estimated costs associated with those elements.
- It appears the estimate was constructed from the ground up, by multiplying each activity by an estimate of the number of forecast actions. The estimate would be more useful to industry if the Agency would subtract the amounts provided by appropriations and estimated appropriations (including appropriations for overhead) and subtracting out an estimate of what industry will pay, resulting in an estimate of what additional funds might be secured from Congress.
- As ACC understands the discussion of the estimate at the September 13 meeting, EPA receives appropriations for overhead purposes, although those amounts are not identified in EPA's budget as TSCA appropriations. Industry would find it helpful to have some additional clarification of how overhead costs are currently covered by appropriations.
- For the purposes of the cost estimate, the number of section 5 actions was reduced by 30%, apparently anticipating that higher section 5 fees would create a financial disincentive to submit PMNs. It would be helpful to understand how EPA made the estimate of the impact of higher section 5 fees. For example, did EPA estimate or model fees at a particular level to calculate the impact, and if so, what were the fee levels?

## 3. Comments Related to the Development of a Proposed Fee Rule

ACC appreciates the difficult task facing EPA in establishing a viable fee system under the LCSA. As the Agency develops the proposed fee rule, we strongly recommend that the proposal include the following:

- An approach to fees for risk evaluations under section 6(b) that accounts for the interest of a manufacturer or processor in a particular chemical or condition of use. For example, in our comments on EPA's risk evaluation process rule, ACC advocated a tiered, "screening level" approach to risk evaluations. For example, some conditions of use may screen out early, and will not require a deeper assessment (such as chemicals for which a voluntary management agreement has been reached with EPA, the chemical has been withdrawn from a particular market, or for which an adequate assessment has already been done). EPA's aggregate cost of a risk evaluation is likely to vary depending on the individual chemical assessed. In these cases, the fee assessed should reflect EPA's level of effort.
- An economic impact analysis of the proposed fee system. The analysis should include an assessment of the impact of fees (perhaps under several alternative approaches) on the TSCA program itself (in terms of the number of anticipated actions), and the impact on chemical manufacturers and processors, including small businesses.
- A more transparent description of TSCA appropriations and funding than is currently available. The Agency has indicated that the annual appropriation for TSCA purposes – roughly \$56 million – does not cover appropriations for overhead costs. The source and amount of funding for the entire TSCA program is a critical element in determining the need for and level of TSCA fees under the LCSA. This description should make clear the impact of any additional appropriations provided EPA for TSCA purposes in FY16, including any appropriation of current section 5 fee revenue.
- A description of the data EPA intends to collect to support future assessment of the fee program, and a description of how the data will be assessed and whether the data and assessments will be publicly available.
- An explanation of how the proposed fee system meets the Congressionally-established policy that TSCA authority be exercised "in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation." (Section 2(b)(3)). The explanation will be particularly helpful where, as here, EPA is anticipating that the fee system will have some impact on the number of PMNs filed under section 5.

If you have any questions on ACC's recommendations, please feel free to contact me at 202 249 6400, or at [mike\\_walls@americanchemistry.com](mailto:mike_walls@americanchemistry.com).

Sincerely,



Michael P. Walls  
Vice President, Regulatory & Technical Affairs

Attachment

cc: Pam Myrick